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SUBJECT: AN IMPARTIAL ELECTORAL COURT IN BOLIVIAN REFERENDA?

Classified By: A/DCM Mike Hammer for reasons 1.4 (b) and (d).

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Summary
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11. (SBU) As Bolivia's opposing political forces face off at the ballot box in 2008, the National Electoral Court (CNE) -- which oversees the electoral process -- faces some of its toughest challenges since Bolivia's return to democracy in the early 1980s. President Evo Morales' Movement Toward Socialism (MAS) and the opposition typified by the autonomy seeking lowland departments (states) are both promoting referenda on their competing visions for Bolivia. The CNE and its departmental lower courts (CDE) have a mere 60 days to organize and execute a national referendum on the MAS' draft constitution and at least four separate referenda on the autonomy statutes proposed by the departments of Beni, Pando, Santa Cruz and Tarija. Normally the electoral courts would have 90-120 days. The CNE and CDEs must carry-out their work in a polarized political environment, where the likelihood for confrontation is high as members of the MAS and opposition have called on their supporters not to accept the other's referendum.

12. (C) With this political back-drop, the Ambassador paid a courtesy call on recently appointed CNE President Jose Luis Exeni March 3. Appointed by President Morales, the opposition views Exeni with considerable skepticism. The firing of three key career CNE officials, within his first day on the court, immediately raised questions about his impartiality. During the meeting Exeni expressed his top priorities are improving: voter registration; citizen education; electoral processes administration; and, the general strengthening of the institution. Regarding the upcoming referenda, Exeni acknowledged that the short deadlines posed administrative, logistical, and budgetary challenges. He and his court colleagues stressed they would "do their job" strictly following the electoral code, and would leave questions on the "legality" of how the various referenda were convoked to the Constitutional Tribunal. (Note: The Constitutional Tribunal is not actually functioning, because all but one its magistrates have left

due to political pressure. End Note). The CNE President expressed that he welcomed the "maximum possible" level of election observation from both international and domestic monitors. Faced with the reality of overseeing a potentially conflictive voting process where his every action is highly scrutinized, Exeni may be rethinking putting his own partisan stamp on the court. End Summary.

What is the National Electoral Court?

13. (U) The CNE is Bolivia's last court of appeals for all judicial cases regarding elections. Decisions by the CNE cannot be appealed. However, the CNE has a much wider mandate. It is also in charge of maintaining the nation's civil registry, educating the public about the electoral process and democracy, certifying political parties and distributing public funds to registered political parties. The court is comprised of five justices, four are designated by a two-thirds majority of congress, the fifth is appointed by the president. The current court lacks its full complement of magistrates, including Exeni there are three magistrates rather than the normal five. The CNE oversees the nine departmental electoral courts, whose justices are appointed in the same manner.

14. (U) President Morales appointed Exeni to the court, replacing the outgoing Salvador Romero who was appointed by President Carlos Mesa. Sworn-in on January 7 as a normal member of the court, he was elected President by his peers on January 8)- a break with the CNE's tradition of designating the senior justice President. Within 24-hours, the Exeni court sparked controversy when three key CNE officials were fired -) the directors of Citizen Education, Information Technology, and Administration. One director had worked with the CNE for 15 years. (Note: A new Director for Information Technology)- with no experience working on the CNE, but with seemingly considerable IT experience)- was appointed February 18, after public solicitation for nominees. End Note).

Challenging Times for the CNE

15. (U) Recent events and Bolivia's divided and confrontational political atmosphere pose many challenges for the CNE. MAS Congress members passed enabling legislation on February 28 calling for a national referendum on their draft constitution, while pro-MAS supporters threatened with violence opposition members who attempted to attend the session. Meanwhile, four opposition-led departments have presented their petitions to their respective CDEs to organize referenda on institutionalizing their demands for greater autonomy. A "yes" vote on the departmental autonomy statutes would greatly reduce the central government's control over the departments. The MAS opposes the opposition-led departments' autonomy efforts and during the February 28 legislative session passed a law that essentially rejects the departmental petitions)- arguing that only Congress can convoke departmental referenda.

16. (U) The enabling legislation passed during the February 28 nearly MAS-only Congressional session scheduled the national constitutional referendum on May 4, the same day as the opposition-led Santa Cruz's department's autonomy statute referendum. Further complicating the CNE's work is that Congress has stipulated that is has a mere 60 days to organize the constitutional referenda. The CNE typically requires 90 to 120 days. The opposition views the scheduling of the constitutional referendum on May 4 as yet another provocation, and now the four lowland opposition departments are seeking to move up their autonomy referenda to April 27.

A Cordial Affair

¶7. (U) The Ambassador paid a courtesy call on recently appointed National Electoral Court (CNE) President Jose Luis Exeni March 3 at the CNE's building in La Paz. (Note: The CNE building was previously the U.S. Ambassadorial residence and was donated to the CNE. End Note). Two other justices attended the CNE's Vice President Jeronimo Pinheiro Lauria, and Amalia Oporto. The USAID director, USAID's team leader for democracy programs, as well as a poloff also attended. The meeting between the Ambassador and CNE justice was quite cordial.

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International Assistance Is Crucial
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¶8. (C) The Ambassador opened the meeting by asking Exeni his thoughts on international assistance to the CNE and the electoral process. Exeni responded that the court is beginning to execute its five year plan which looks at strengthening and improving four areas: the civil registry (voter registration); citizen education; administration of electoral processes; and, the general strengthening of the institution (CNE). Exeni explained that the Netherlands, Denmark, Sweden, Japan and the United Nations Development Program are contributing funding to the five year plan. He argued that international assistance is crucial to the court.

¶9. (C) Later in the meeting Exeni stressed that the CNE views a "maximum" level of observation -- by international observers (the European Union and Organization of American States) as well domestic observers -- as very important. He emphasized that he would like to see the "largest possible participation" of observers. The Ambassador remarked that the international community might find it difficult to support the referendum process)- whether via observers or simply funding)- given questions regarding the legitimacy of the process in which the various referenda were convoked. Exeni tried to reassure the Ambassador that the CNE's process would be free and fair by asserting "we will do our job." Exeni acknowledged, however, that "nothing is normal" but that it was necessary to guarantee the participation of election observers.

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We Will Comply With Our Mandate And Nothing Else
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¶10. (C) Time and again, Exeni and his two court colleagues stressed that despite the tense political climate they would only perform their jobs as stipulated in Bolivia's electoral code, arguing the code was "clear" about the CNE's duties. Exeni explained it was not the CNE's role to determine the legality of the convoking legislation)- be it the legislation for the constitutional referendum or the departmental petitions. Exeni argued that the lack of a Constitutional Tribunal represented "a large void" judicially. The Constitutional Tribunal is the body which has the mandate to decide the constitutionality of a particular law or action by the executive and/or legislative branch.

¶11. (C) Regarding the competing referenda, Exeni stated that CNE should oversee both. Referring to Exeni's comments that the CNE must follow the law, the Ambassador pointed out that MAS-dominated Congress on February 28 had passed legislation making itself responsible for convoking any departmental referenda)- a move that essentially criminalizes the opposition's current push for departmental referenda on their autonomy statutes. Exeni explained that the departmental courts are the actual bodies that will organize and oversee elections, and that they have the "competency" (responsibility) to administer the departmental referenda.

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A Complicated Situation
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¶12. (C) Exeni and his colleagues acknowledged they face a very "complicated" situation. Vice President Pinheiro)- who is responsible for overseeing the administrative aspects of the electoral process -- stressed the 60-day deadline set by Congress posed a serious challenge to the CNE' administrative, budgetary and logistical capacities. Exeni explained that the court had yet to complete a thorough forecast of the cost of the elections, but that he and his colleagues would soon be evaluating whether or not the CNE had the requisite funds to organize and execute the various referenda. Exeni explained that he felt it was more rational and efficient (presumably cost and logistically efficient) to schedule the referenda on the same day. (Comment: While Exeni's argument is valid, his nod to scheduling the referenda allies him with the MAS position and implies his acceptance of the MAS controversial convoking legislation. End Comment).

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Fraud Concerns
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¶13. (C) The opposition frequently voices its concern that the upcoming referenda will be fraught with fraud and undue influence. There is less concern that the CNE will directly participate in fraud, rather that it will "look the other way." Many in the opposition fear that Venezuela "carnet"

(identification card) program will be used to increase the MAS voter pool. An abnormal spike in voter registrations in a particular electoral district is something the CNE has the tools and mandate to investigate; however, the CNE justices have to authorize such an investigation. The opposition also argues that the MAS (and government) are unfairly (and perhaps) illegally financing their campaign to promote the MAS draft constitution. The MAS-approved government budget set aside 10 million Bolivianos (\$1.3M USD) to promote a national "yes" campaign for the MAS constitution. Meanwhile radio, TV and newspaper advertisements touting the MAS magna carta have been circulating since December, yet the electoral code states such activity is permissible only once an election has been officially convoked, and only for the 60 days prior to the election. (Note: The government could/may argue that a referendum is not an election per se, and therefore the 60-day limit, and other advertising rules do not apply. End Note). The electoral code also stipulates that state-media outlets must provide equal time to opposition points of view, however it remains to be seen whether the CNE will enforce this requirement. The opposition also insists that unaccountable Venezuelan money is pouring into Bolivia, some of it used to promote the MAS constitution and to denigrate the opposition's position.

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Comment
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¶14. (C) Exeni repeatedly stressed how "complicated" the coming electoral processes will be. The CNE President explained that one of his key goals was to "preserve" and even "strengthen" the CNE as an institution throughout the process)- arguing the CNE's independence, impartiality and autonomy are vital to its preservation. Exeni argued that if the CNE's independence is lost, it would be dangerous for Bolivia's democracy. We concur with this sentiment, yet unfortunately Exeni himself poses an obstacle to achieving his own goal. The opposition is highly suspicious of him. Following Exeni's dismissal of the three long-serving court directors the opposition publicly voiced its concerns over the future of the court's independence and impartiality.

¶15. (C) Beyond the dismissals, the Morales administration's more favorable approach to the court causes some observers to doubt the Exeni court's commitment to impartiality. Under the previous CNE President's tenure, President Morales chose not to fund the CNE's five year plan. In fact Evo publicly

stated that the government rejected funding the plan because he considered the court partial (i.e. favorably disposed to the traditional -- non-MAS) parties). Now with the change in CNE presidency, Morales has changed his mind, leading some in the opposition to believe the court is now MAS-controlled.

Interestingly, without prompting from us, Exeni appeared to want to deflect his opposition critics' arguments by stating "we will approach the process calmly, we have received no pressure from either side."

¶16. (C) Exeni himself is in a very "complicated situation," his actions are under the microscope -- a level of scrutiny he is likely nervous about. He may be rethinking)- if he ever contemplated it) putting his own partisan stamp on the court. For example, when the first petition books for calling a referendum on Santa Cruz's autonomy statutes were delivered to the Santa Cruz CDE Exeni attempted to block the action, arguing Congress had to rule on the subject. He appears to have backtracked considerably. Now his position is that the CNE and CDEs will oversee the opposition-led departments' demands for a vote on their autonomy statutes despite the February 28 Congressional legislation prohibiting any body other than Congress from calling departmental referendum. End Comment.
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